

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

10-CR-6063L (WDNY)  
15-CV-6343L (WDNY)  
15-CV-6594L (D. CONN)

v.

JOSEPH CLARK,

Defendant.

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Joseph Clark has filed petitions pursuant to 28 U.S.C. § 2255 in two courts, the Western District of New York and the District of Connecticut. In the case filed in the Western District of New York (15-CV-6343L, 10-CR-6063L) this Court issued an Order (Dkt. #41) directing Clark to respond as to why his petition should not be dismissed as time-barred. Clark was sentenced by this Court on January 14, 2011 and the § 2255 petition was not filed until June 4, 2015.

Clark, who is detained at the Danbury Federal Correctional Institution located in Connecticut, had previously filed a similar petition seeking relief on September 16, 2014 in the District of Connecticut. By Order entered April 14, 2015, Connecticut District Judge Vanessa Bryant dismissed that petition for lack of jurisdiction because Clark had been convicted in the Western District of New York and not in Connecticut.. Clark filed a motion to reconsider that decision and on September 29, 2015, the Second Circuit, on a petition for leave to file a successive 2255 petition, denied it because the Court deemed it was not “final” because there was still a pending § 2255 Petition in the Western District of New York.

Therefore, the Second Circuit transferred the Connecticut case to the Western District of New York and that case now is docketed in the Western District of New York under docket number 15-CV-6594L.

The Second Circuit's Order of July 21, 2015 transferring the Connecticut case to the Western District of New York was done on authority of *Hum Sui Ching v. United States*, 298 F.3d 174, 177 (2d Cir. 2002). That decision treated multiple pending § 2255 motions and deemed the second as, in effect, a motion to amend the first petition.

The Government is directed to submit a Reply to Clark's Response (Dkt. #43) in the Western District of New York to the Order to Show Cause as to why the motion is time-barred. In addition, the Government should respond as to how this Court should deal with the case transferred by the Second Circuit and treated as a motion to amend. As discussed above, District Judge Bryant of the District of Connecticut has dismissed the Connecticut petition for lack of jurisdiction but there now appears to be pending a motion for reconsideration (Dkt. #18 in 15-CV-6594).

The Government is directed to respond to these matters on or before December 14, 2015.

The Clerk of Court is directed to file 15-CV-6594 (from Connecticut) as a motion to amend Docket #40 (motion to vacate under 28 U.S.C. § 2255) in 10-CR-6063L. The Clerk should also close 15-CV-6594).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
October 19, 2015.